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Transcript of Lamar Horton

Date: February 21, 2018

Case: UMG -v- Grande

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 red.</p> <p>2 Do you see that?</p> <p>3 A. Numbers in red.</p> <p>4 Q. Yes, sir. Number one --</p> <p>5 A. Oh, yes.</p> <p>6 Q. -- letter or email.</p> <p>7 A. Yes. Yes.</p> <p>8 Q. So the outline proceeds, underneath "Need to</p> <p>9 build communication procedure" (as read): Number 1,</p> <p>10 letter or email.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And it states (as read): Current process can</p> <p>14 be followed, just need to ensure letter has been mailed.</p> <p>15 Do you see that?</p> <p>16 A. Yep.</p> <p>17 Q. Do you recall discussions about whether or not</p> <p>18 letters were actually not being mailed, even though the</p> <p>19 system was calling for them to be mailed?</p> <p>20 A. That's the wrong context. The context is, as</p> <p>21 it gets to the point of working through a repeat</p> <p>22 violation, ensuring that a letter was received by the</p> <p>23 customer so that we are not making any assumptions and</p> <p>24 any mistakes because it's leading to a customer</p> <p>25 communication.</p>	<p style="text-align: right;">75</p> <p>1 Underneath "Contact customer by phone," it</p> <p>2 states (as read): Determination of contact built on</p> <p>3 Excess Violations2 SSRS report.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. An SSRS report is a -- is a document generated</p> <p>7 by Grande's information system; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this is referring to a report reflecting</p> <p>10 Grande customers that Grande has evidence have excessive</p> <p>11 violations of copyright infringement.</p> <p>12 MR. HOWENSTINE: Objection. Vague.</p> <p>13 Confusing.</p> <p>14 A. I can only assume that's accurate, yes.</p> <p>15 Q. (BY MR. O'BEIRNE) Okay.</p> <p>16 A. But I don't know.</p> <p>17 Q. Well, you just testified you were familiar with</p> <p>18 the context of this conversation regarding making</p> <p>19 sure --</p> <p>20 A. I am. The particular report.</p> <p>21 Q. I'm sorry. Let me finish the question.</p> <p>22 You testified you were familiar with the</p> <p>23 context of what it meant to ensure the letter has been</p> <p>24 mailed; right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">74</p> <p>1 Q. Okay. So you remember what this means?</p> <p>2 A. I -- I -- I know the context of what this is,</p> <p>3 yes.</p> <p>4 Q. Okay. How do you know the context of what this</p> <p>5 is?</p> <p>6 A. Through general discussions.</p> <p>7 Q. With whom?</p> <p>8 A. Various Grande employees.</p> <p>9 Q. Okay. And your understanding of what that</p> <p>10 means is need to ensure the letter's been mailed. If</p> <p>11 the company's going to take action on the letter that</p> <p>12 was sent to a customer, you want to make sure the letter</p> <p>13 went out to the customer?</p> <p>14 A. Correct.</p> <p>15 Q. Is that because there were times where the</p> <p>16 company went to take action against a customer based on</p> <p>17 a letter that you thought went out and then the customer</p> <p>18 said, "Hey, I never received that"?</p> <p>19 A. Not to my knowledge, but I -- I believe the</p> <p>20 intention was to avoid that particular scenario.</p> <p>21 Q. Number two, underneath "Communication</p> <p>22 Procedure" (as read): Contact customer by phone.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And -- strike that.</p>	<p style="text-align: right;">76</p> <p>1 Q. Your understanding is that the excess</p> <p>2 violations to SSRS report is a report generated by</p> <p>3 Grande, containing information about customers that</p> <p>4 Grande has determined have received an excessive amount</p> <p>5 of copyright infringement notices.</p> <p>6 MR. HOWENSTINE: Objection. Vague.</p> <p>7 A. Yes; however, I cannot explain the details of</p> <p>8 that report.</p> <p>9 (Exhibit 57 marked.)</p> <p>10 Q. (BY MR. O'BEIRNE) I'm handing you PX 57.</p> <p>11 Do you see this is a binder-clipped</p> <p>12 printout of an Excel spreadsheet?</p> <p>13 Is that fair?</p> <p>14 A. Yes.</p> <p>15 Q. I'm certainly not asking you to read this</p> <p>16 entire document, but I want to ask you some questions</p> <p>17 about it and first put a couple things in the record.</p> <p>18 You'll turn to the last page and see, if</p> <p>19 you would, please, that the last page is a piece of</p> <p>20 paper with a Bates number on the bottom, GRANDE0000155.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And then the text in the middle says (as read):</p> <p>24 This document was provided in native format upon</p> <p>25 request.</p>

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67 (265 to 268)

<p style="text-align: right;">265</p> <p>1 via certified mail.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. It then says (as read): If Grande receives</p> <p>5 subsequent notices of potential infringement regarding</p> <p>6 the same account, that subscriber's Internet service</p> <p>7 with Grande is permanently terminated.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Turning back to Exhibit 84 and the tally we</p> <p>11 were just looking at, we'd flipped to where the tally</p> <p>12 count switches from four to three.</p> <p>13 Do you remember that?</p> <p>14 A. Yes.</p> <p>15 Q. I'll represent to you that's at line 1593 in</p> <p>16 the Excel file.</p> <p>17 A. Okay.</p> <p>18 Q. Do you think 1500 customers receiving more than</p> <p>19 three notices of infringement in 2015 is a relatively</p> <p>20 small amount of customers?</p> <p>21 A. Compared to what?</p> <p>22 Q. So your email to your boss said (as read): My</p> <p>23 gut is that a relatively small group of users drive it.</p> <p>24 So I'm asking you: Do you think 1593 users</p> <p>25 would qualify as a relatively small group?</p>	<p style="text-align: right;">267</p> <p>1 A. Ruth Ann Welsh is an RCN project manager.</p> <p>2 Q. I had a feeling you were going to say that.</p> <p>3 Other than being an RCN -- strike that.</p> <p>4 What is your familiarity with the role that</p> <p>5 Ruth Ann Welsh fulfills at RCN?</p> <p>6 A. Ruth Ann manages a myriad of projects in RCN's</p> <p>7 company, many of which have included Grande because we</p> <p>8 have certain operations that are synchronized or same</p> <p>9 technologies or whatever the case may be.</p> <p>10 Q. Keep in mind this email's August 15, 2016.</p> <p>11 Right?</p> <p>12 A. Yes. Yes.</p> <p>13 Q. Are you testifying that Grande and RCN had</p> <p>14 operations that were synchronized prior to August 15th,</p> <p>15 2016?</p> <p>16 A. Sure.</p> <p>17 Q. So were there times where RCN project managers</p> <p>18 were directing Grande employees on Grande projects?</p> <p>19 A. "Directing" may not be the right word.</p> <p>20 "Involved with" is how I'd probably quantify it.</p> <p>21 Q. Were there times when RCN project managers were</p> <p>22 managing Grande employees on Grande projects?</p> <p>23 A. Again, I would say working with, but that</p> <p>24 direction would only come from Patriot, meaning, if</p> <p>25 there was a project to be executed and Patriot wanted</p>
<p style="text-align: right;">266</p> <p>1 A. From a ballpark perspective, yes, I do.</p> <p>2 Q. How many of those users were kicked off for</p> <p>3 copyright infringement by Grande in 2015?</p> <p>4 A. To the best of my knowledge, none.</p> <p>5 Q. 2016?</p> <p>6 A. Also none.</p> <p>7 (Exhibit 85 marked.)</p> <p>8 Q. (BY MR. O'BEIRNE) I'm handing you PX 85. This</p> <p>9 is a document produced by Grande in this case; right?</p> <p>10 A. Yes.</p> <p>11 Q. This is an email Stephanie Christianson sent to</p> <p>12 you August 15, 2016; right?</p> <p>13 A. Yes.</p> <p>14 Q. She cc'd Mr. Jordan?</p> <p>15 A. Yes.</p> <p>16 Q. It's titled "DMCA Notification Letters/Emails."</p> <p>17 Right?</p> <p>18 A. Yes.</p> <p>19 Q. Her email states (as read): Good afternoon,</p> <p>20 Lamar. I wanted to touch base with you on a call I</p> <p>21 received Friday afternoon from Ruth Ann Welsh, RCN's</p> <p>22 project manager.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Who is Ruth Ann Welsh?</p>	<p style="text-align: right;">268</p> <p>1 Grande to, for example, do the same thing that RCN's</p> <p>2 doing and let one of RCN's employees help manage it for</p> <p>3 us, that would be at the direction of Patriot.</p> <p>4 Q. Stephanie continues (as read): According to</p> <p>5 her, Ruth Ann Welsh, Rob R. and Bill S. requested she</p> <p>6 contact me to get some statistical information re our</p> <p>7 DMCA email notification process.</p> <p>8 That's what she says; right?</p> <p>9 A. Yes.</p> <p>10 Q. Who's Rob R.?</p> <p>11 A. Rob Roeder.</p> <p>12 Q. Who's Bill S.?</p> <p>13 A. That would be Bill Sievers.</p> <p>14 Q. What does Bill Sievers do?</p> <p>15 A. Bill Sievers manages the call centers at both</p> <p>16 RCN and Grande.</p> <p>17 Q. Is Bill Sievers a Grande employee or an RCN</p> <p>18 employee?</p> <p>19 A. Bill Sievers is not a Grande employee. I do --</p> <p>20 I believe he's an RCN employee.</p> <p>21 Q. For how long has Bill Sievers managed Grande's</p> <p>22 call center?</p> <p>23 A. Directly, since we merged the company under</p> <p>24 TPG.</p> <p>25 Q. Prior to -- I'm sorry. Strike that.</p>

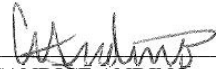
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75 (297 to 300)

<p style="text-align: right;">297</p> <p>1 Q. So let's say that were February 15th, 2017.</p> <p>2 I'm not saying that's when it was, but let's just assume</p> <p>3 that that's the date.</p> <p>4 How did your responsibilities change from</p> <p>5 the day before you became the DMCA agent to the day</p> <p>6 after you became the DMCA agent?</p> <p>7 A. From my perspective, other than being listed as</p> <p>8 a contact to the outside world, my responsibilities did</p> <p>9 not change.</p> <p>10 Q. No additional oversight over the DMCA process?</p> <p>11 A. No.</p> <p>12 Q. No additional responsibilities to quality check</p> <p>13 the DMCA process?</p> <p>14 A. No.</p> <p>15 Q. No responsibilities to be trained on the latest</p> <p>16 developments of the DMCA process?</p> <p>17 A. No.</p> <p>18 Q. No responsibilities to brief senior management,</p> <p>19 anybody senior to you, on the status of the DMCA</p> <p>20 process?</p> <p>21 A. Not after the date of being named the agent,</p> <p>22 no.</p> <p>23 Q. So, to the extent that you were already</p> <p>24 briefing your superiors on network issues in general,</p> <p>25 you continue doing so?</p>	<p style="text-align: right;">299</p> <p>1 Q. How often does Mr. Rohre and the six VPs sit</p> <p>2 down and talk about leadership issues at Grande?</p> <p>3 A. We meet weekly or biweekly to have general</p> <p>4 staff meetings.</p> <p>5 Q. When you say "staff meetings," that would</p> <p>6 normally entail Mr. Rohre and the VPs?</p> <p>7 A. Yes.</p> <p>8 Q. And at those staff meetings -- strike that.</p> <p>9 Those staff meetings occur weekly,</p> <p>10 sometimes more than weekly?</p> <p>11 A. They're usually weekly, sometimes biweekly,</p> <p>12 every other week.</p> <p>13 Q. How often is the DMCA process discussed at</p> <p>14 those meetings?</p> <p>15 A. That process is not discussed at those</p> <p>16 meetings.</p> <p>17 Q. You have never attended a staff meeting with</p> <p>18 Mr. Rohre where the topic of the DMCA process has come</p> <p>19 up?</p> <p>20 A. Not that I recall.</p> <p>21 Q. How long have you been attending those</p> <p>22 meetings?</p> <p>23 A. Since I've reported to him, which would be</p> <p>24 2015-ish.</p> <p>25 Q. So, since 2015, at the weekly staff meetings,</p>
<p style="text-align: right;">298</p> <p>1 A. That is correct.</p> <p>2 Q. It didn't change in any way with your</p> <p>3 additional title as DMCA agent?</p> <p>4 A. That is correct.</p> <p>5 Q. How often does the Grande -- well, strike that.</p> <p>6 So you report to Mr. Rohre?</p> <p>7 A. Yes.</p> <p>8 Q. Who else reports directly to Mr. Rohre?</p> <p>9 A. Five or six other vice presidents.</p> <p>10 Q. And what do you call, colloquially, the group</p> <p>11 of vice presidents that report to Mr. Rohre? Other than</p> <p>12 vice president, is there a term, like, "senior staff" or</p> <p>13 "senior leadership team," or is there some way that you</p> <p>14 would refer to that group of direct reports to</p> <p>15 Mr. Rohre?</p> <p>16 A. Not specifically. Maybe it loosely references</p> <p>17 the executive team, but there's no alias or a group</p> <p>18 name.</p> <p>19 Q. And Mr. Kramp is not one of those six</p> <p>20 people; right?</p> <p>21 A. That reports to Matt?</p> <p>22 Q. Yes.</p> <p>23 A. No.</p> <p>24 Q. Correct, he's not?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">300</p> <p>1 the subject of the DMCA process at Grande has never been</p> <p>2 discussed, to your recollection?</p> <p>3 A. Not that I recall. And -- and, if it was, it</p> <p>4 was not a -- there was no details or making decisions or</p> <p>5 policy-type discussions. Our perspective is that what</p> <p>6 we're doing or not doing was started with ABB and</p> <p>7 transitioned to Patriot.</p> <p>8 (Exhibit 92 marked.)</p> <p>9 Q. (BY MR. O'BEIRNE) I'm handing you Plaintiffs'</p> <p>10 Exhibit 92. If you turn to the last document -- strike</p> <p>11 that.</p> <p>12 If you turn to the last page of Plaintiffs'</p> <p>13 Exhibit 92, you'll see that it has a Bates number slip</p> <p>14 sheet reflecting that it's a native Excel that was</p> <p>15 produced in connection with this case.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that this one does have row numbers?</p> <p>19 A. Yes.</p> <p>20 Q. If you turn back to the first page, the title</p> <p>21 of this Excel spreadsheet is "Specific Account DMCA</p> <p>22 Violations."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Have you seen a report like this in the past?</p>

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76 (301 to 304)

<p style="text-align: right;">301</p> <p>1 A. I do not recall seeing a report like this.</p> <p>2 Q. Are you aware of Grande's ability to run such a</p> <p>3 report?</p> <p>4 A. Well, it's a logical assumption that if Grande</p> <p>5 provided this that we generated the report.</p> <p>6 Q. I understand that. I'm not asking you to</p> <p>7 assume anything. I'm -- I'm asking you something a</p> <p>8 little different.</p> <p>9 I'm saying: What is your understanding of</p> <p>10 Grande's ability to generate a report like this?</p> <p>11 A. I think we've seen other examples today of</p> <p>12 being able to query the database and provide reports of</p> <p>13 this information.</p> <p>14 Q. So is your testimony that whatever knowledge</p> <p>15 you have about reports like this has been gleaned</p> <p>16 sitting here with me, looking at exhibits I've been</p> <p>17 showing you?</p> <p>18 A. I would not quantify it that way.</p> <p>19 Q. All right. So what -- what understanding do</p> <p>20 you have, sitting here today, about Grande's ability to</p> <p>21 generate this report?</p> <p>22 A. As I stated, we have the ability to generate</p> <p>23 these reports. We've seen examples of them today.</p> <p>24 Q. Who generates them?</p> <p>25 A. I don't know why these reports are generated.</p> <p style="text-align: right;">302</p> <p>1 Q. Do you see that, Plaintiffs' Exhibit 92, there</p> <p>2 is an Entity column on the right-hand side?</p> <p>3 A. I do.</p> <p>4 Q. And Exhibit 92 lists, as specific account DMCA</p> <p>5 violations, numerous ticket numbers with the source</p> <p>6 entity as Rightscorp Inc.</p> <p>7 A. I do.</p> <p>8 Q. Please bear with me for a second.</p> <p>9 MR. O'BEIRNE: That's all the questions I</p> <p>10 have for Mr. Horton at this time. I pass the witness.</p> <p>11 MR. HOWENSTINE: I have no questions of the</p> <p>12 witness.</p> <p>13 THE VIDEOGRAPHER: The time is 6:47 p.m.,</p> <p>14 on February 21st, 2018. This completes the video</p> <p>15 deposition of Lamar Horton.</p> <p>16 THE REPORTER: Would you like to order a</p> <p>17 copy of the transcript?</p> <p>18 MR. HOWENSTINE: Yes, I would.</p> <p>19 (Deposition concluded at 6:47 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">303</p> <p>CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, CANDICE ANDINO, the officer before whom the</p> <p>3 foregoing deposition was taken, do hereby certify that</p> <p>4 the foregoing transcript is a true and correct record of</p> <p>5 the testimony given; that said testimony was taken by me</p> <p>6 stenographically and thereafter reduced to typewriting</p> <p>7 under my direction; that reading and signing was not</p> <p>8 requested; and that I am neither counsel for, related</p> <p>9 to, nor employed by any of the parties to this case and</p> <p>10 have no interest, financial or otherwise, in its</p> <p>11 outcome.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>13 this 5th day of March, 2018.</p> <p>14</p> <p>15 </p> <p>CANDICE ANDINO</p> <p>16 TX CSR No. 9332, RMR</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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